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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,405	11/21/2001	Alan L. Mueller	072827-1905	4028
23620	7590	09/22/2004	EXAMINER	
FOLEY & LARDNER 402 WEST BROADWAY 23RD FLOOR SAN DIEGO, CA 92101			KWON, BRIAN YONG S	
			ART UNIT	PAPER NUMBER
			1614	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/990,405	MUELLER ET AL.	
	Examiner	Art Unit	
	Brian S Kwon	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 May 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 5,6 and 21-24 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 5,6, 21-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Status of Application

1. Acknowledgement is made of applicant's filing of Amendment on May 7, 2004. By the amendment claims 1-4 and 7-20 have been cancelled and claims 5-6 and 21-24 have been amended.
2. This instant application has been reassigned to this examiner, Brian kwon, due to the Examiner Clinton Ostrup's departure from USPTO. The examiner Clinton Ostrup indicated in the Office Action (page 2 of O.A. mailed November 12, 2003) that the claims 5-6 and 21-24 are free of art. However, in reconsideration, this examiner disagrees with the examiner Clinton Ostrup's position and withdraws from such statement.
3. Applicant's arguments with respect to claims 5-6 and 21-24 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

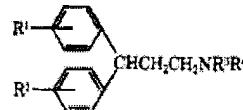
The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 5-6 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (Journal of Medicinal Chemistry, 1971, Vol. 14, No.2, pp. 161-4).



Jones teaches use of 1,1-diphenyl-3-aminopropanes, wherein R1 is H, 3-F, 3-CF₃, 2-Me, 2-MeO, 4-F, 4-Cl; R2 is H, 3-F, 3-CF₃, 4-F, 4-Cl; R3 is CH₃; R4 is H or CH₃; or pharmaceutically acceptable salts (e.g., HCl, oxalate), as antidepressant agent that is useful for the treatment of depression (Table III; Experimental Section in pages 162-163).

The teaching of Jones differs from the prior art by reciting a specific species, more particularly 3-F at X1 and X2 and -CH₃ or -H at R3 (claims 22 and 24). However, it would have been obvious to a person skilled in the art at the time of the invention was made to arrive at the claimed invention since an ordinary skill in the art would have the reasonable expectation that any of the species of the genus would have similar properties and, thus, the same use as the genus as a whole. One would have been motivated to combine these references and make the modification because they are drawn to same technical fields (constituted with same ingredients

and share common utilities), and pertinent to the problem which applicant concerns about. MPEP 2141.01(a).

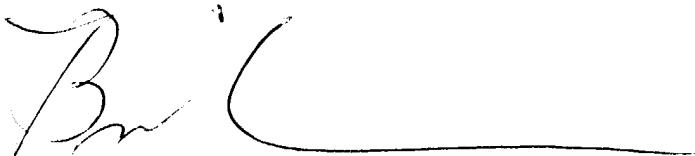
Conclusion

5. No Claim is allowed.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Kwon whose telephone number is (571) 272-0581. The examiner can normally be reached Tuesday through Friday from 9:00 am to 7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached on (571) 272-0951. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Brian Kwon
Patent Examiner
AU 1614

A handwritten signature in black ink, appearing to read "Brian Kwon".